

The term “independent contractor” as used in section 3(r) has reference to an independent business which performs services for other businesses as an established part of its own business activities. The term “independent contractor” as used in 3(r) thus has reference to an independent business which is a separate “enterprise,” and which deals in the ordinary course of its own business operations, at arms length, with the enterprises for which it performs services.

(c) There are many instances in industry where one business performs activities for separate businesses without becoming a part of a larger enterprise. In addition to the examples cited in the Report they may include such services as repairs, window cleaning, transportation, warehousing, collection services, and many others. The essential test in each case will be whether such services are performed “for” the enterprise by an independent, separate enterprise, or whether the related activities are performed for a common purpose through unified operation or common control. In the latter case the activities will be considered performed “by” the enterprise, rather than “for” the enterprise, and will be a part of the enterprise. The distinction in the ordinary case will be readily apparent from the facts. In those cases where questions arise a determination must be made on the basis of all the facts in the light of the statute and the legislative history.

§ 779.234 Establishments whose only regular employees are the owner or members of his immediate family.

Section 3(s) provides that any “establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner” shall not be considered to be an “enterprise” as described in section 3(r) or a part of any other enterprise. Further the sales of such establishment are not included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of section 3(s). The term “other member of the immediate family of such owner” is considered to include relationships such as brother, sis-

ter, grandchildren, grandparents, and in-laws but not distant relatives from separate households. The 1966 amendments extended the exception to include family operated establishments which only employ persons other than members of the immediate family infrequently, irregularly, and sporadically. (See general discussion in part 776 of this chapter.)

§ 779.235 Other “enterprises.”

No attempt has been made in the discussion of the term “enterprise,” to consider every possible situation which may, within the meaning of section 3(r), constitute an “enterprise” under the Act. The discussion is designed to explain and illustrate the application of the term in some cases; in others, the discussion may serve as a guide in applying the criteria of the definition to the particular fact situation. A more complete discussion is contained in part 776 of this chapter.

COVERED ENTERPRISES

§ 779.236 In general.

Sections 779.201 through 779.235 discuss the various criteria for determining what business unit or units constitute an “enterprise” within the meaning of the Act. Sections 779.237 through 779.245 discuss the criteria for determining what constitutes a “covered enterprise” under the Act with respect to the conditions for coverage of those enterprises in which retail sale of goods or services are made. As explained in §§ 779.2 through 779.4, previously covered employment in retail and service enterprises will be subject to different monetary standards than newly covered employment in such enterprises until February 1, 1971. For this reason the enterprise coverage provisions of both the prior and the amended Act are discussed in the following sections of this subpart.

§ 779.237 Enterprise engaged in commerce or in the production of goods for commerce.

Under section 3(s) the “enterprise” to be covered must be an “enterprise engaged in commerce or in the production of goods for commerce.” This is defined in section 3(s) as follows: